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मामला क्रमांक Cr.A. No. 198/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | APPELLANT (In Jail) | Radhe @ Radheshyam, S/o Kejaha Ram, Aged about 40 years at the time of incident, R/o Singhanpuri, P.S. Takhatpur, Dist. Bilaspur (CG). |
| | | -Versus- |
| | RESPONDENT | State of Chhattisgarh, Through Station House Officer, P.S. Takhatpur, District Bilaspur (CG). |

Present :- Shri Suresh Pandey and Shri Virendra Chandrakar, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

DB: - HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

ORAL JUDGMENT
(Delivered on 16th April, 2007)

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 17-4-1998 passed by Seventh Additional Sessions Judge, Bilaspur, in Sessions Trial No.249/97 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Ishwar Prasad, and sentenced to undergo imprisonment for life. However, learned Additional Sessions Judge acquitted co-accused namely, Vijay Kumar and Kabeli Bai, son and wife of the accused/appellant.

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2) The case of the prosecution, in brief, is that Biharilal (PW-1) lodged the First Information Report in Police Station Takhatpur on 28-6-1997 to the effect that Bai, widow of Ramratan, who is his sister-in-law in relation, came and informed that her son-in-law Ishwar (since deceased) was attacked by Radhe Kurmi with lathi & kudri, on account of agricultural land dispute, due to which Ishwar sustained injuries. He became unconscious. He was lying in front of the house of one Latel Gond. From there they have brought Ishwar by bullock cart to their house. Bhiarilal (PW-1) went to the house of his sister-in-law and saw the body of Ishwar. There were injuries on the head and other parts of the body. Ishwar was already dead. Receiving this report, Station House Officer, Police Station Takhatpur, registered the First Information Report (Ex.P/1) & merg intimation (Ex.P/2), left for scene of occurrence, after giving notice (Ex.P/3) to the panchas, prepared inquest (Ex.P/4) on the body of Ishwar. Sando Baniyan of accused was seized under Ex.P/5. Bamboo lathi was seized vide Ex.P/7 from Vijay Kumar. One kudri was seized under Ex.P/8. The sari of Bai was seized under Ex.P/9. The accused gave memorandum (Ex.P/10) about lathi, weapon of offence. On the basis of memorandum, lathi was seized from the accused. At the same time, accused Radhe also lodged report (Ex.P/16) in the Police Station Takhatpur to the effect that at about 12.00 noon when he was ploughing the field, Ishwar came armed with lathi and started attacking him. In spite of his objection, he attacked 3-4 times, as a result of which he sustained injuries and informed Khaniya Das, Kotwar. The same was entered into Rojnamcha Sanha (Ex.P/17). Halka Patwari, Balram Sahu, prepared site plan of the place of occurrence under Ex.P/18. The body of Ishwar was sent for postmortem examination to the Community Health Centre, Lormi under

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Ex.P/19 where Dr. D. Lodge (PW-10) conducted postmortem on the body of Ishwar, prepared report (Ex.P/27), in which he opined that the cause of death is shock and hemorrhage due to multiple head injuries and other injuries over the body. Death was homicidal in nature.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Bilaspur, who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Bilaspur, received the same on transfer for trial.

4) In order to establish charge against the accused persons, the prosecution examined 10 witnesses. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the case.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant - Radhe as aforementioned. However, acquitted co-accused namely Vijay Kumar and Kabeli Bai, son and wife of the accused/appellant.

6) We have heard learned counsel for both the parties and perused the material available on record.

7) Learned counsel appearing for the accused/appellant has not disputed homicidal death of Ishwar. Moreover, Bai (PW-2) has categorically stated the manner in which the accused assaulted the deceased with the lathi and about the injuries sustained by Ishwar. The same is corroborated by the

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medical evidence of Dr. D. Lodge (PW-10), who has stated that he conducted postmortem on the body of Ishwar and noticed as many as 17 injuries, out of which injury No.1 is dangerous to the life as the parietal bone was fractured. Therefore, in view of the ocular and medical evidence, it is established that the death of Ishwar was homicidal in nature.

8) As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel appearing for the accused/appellant argued that the prosecution filed charge sheet against three accused persons, out of which two accused persons namely Vijay Kumar and Kabeli, son and wife of the accused, have been acquitted by the trial Court on the same evidence, therefore, accused – Radhe is also entitled for acquittal on the same ground. He also argued that as per the evidence of Bai (PW-2), when accused attacked the deceased, the persons were working in the adjoining fields, but they did not come and intervene, therefore, he argued that had there been any occurrence they would have come and intervene. He further argued that the evidence of Bai (PW-2) does not inspire confidence, as there are lot of omissions and contradictions in the evidence.

9) On the other hand, learned counsel for the State, supported the judgment of the trial Court.

10) Having heard learned counsel for the parties, we have perused the record as well as the evidence of Bai (PW-2) in order to appreciate the arguments advanced by learned counsel appearing for the respective counsel.

11) Bai (PW-2), who witnessed the crime in question, has stated that on the fateful day accused – Radhe, was ploughing the field. She went there

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and asked Radhe as to why he is ploughing her filed. At that time, her son-in-law Ishwar was with her. Co-accused Vijay Kumar and Kabeli, son and wife of the accused, were also ploughing the field. When she enquired from Radhe why he is ploughing the field, the accused abused her and said that whether the land belongs to your father. On which she replied 'Yes'. Radhe attacked Ishwar with lathi, his wife Kabeli attacked with Kudri and his son Vijay Kumar attacked with Tutari on the leg. Radhe attacked on the chest and thereafter they ran away. She brought Ishwar on road. Thereafter putting him in bullock cart, brought to residence. She informed about the incident to Biharilal. Thereafter Biharilal lodged the report.

12) Having perused the above evidence of Bai (PW-2) as also Biharilal (PW-1), who has stated that Bai (PW-2) came and informed him that the accused persons have attacked her son-in-law Ishwar. First Information Report (Ex.P/1) was lodged by Biharilal on the information given by Bai (PW-2), in which he has mentioned that he was informed by Bai (PW-2) that accused Radhe has assaulted Ishwar. In First Information Report, nothing has been mentioned about the assault made by Vijay Kumar and Kabeli. Therefore, the trial Court came to the conclusion that in the First Information Report only the name of accused-Radhe was shown as the assailant and other co-accused persons' names were not there. Moreover, Radhe was the main accused, therefore, the trial Court giving benefit of doubt to the co-accused Vijay Kumar and Kabeli, acquitted them.

13) The accused himself gave information in writing to the Police Station, Takhatpur (Ex.P/16) that when he was ploughing the field at about 12.00 noon, deceased Ishwar came and attacked him with lathi. This fact shows

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that in fact the dispute took place on the place of incident. The accused, however, in his statement under Section 313 of the Code of Criminal Procedure, has not stated and there is total denial about the incident. Moreover, in this report, the accused mentioned that he sustained 3-4 injuries, but there is no injury report regarding the injuries sustained by him. From the above evidence, it is established that in fact the incident took place at the place of occurrence. Bai (PW-2) has categorically stated that accused Radhe attacked her son-in-law Ishwar with lathi. The evidence of Bai (PW-2) is corroborated by the medical evidence of Dr. D. Lodge (PW-10), who has stated that there was incised wound of size 4" x 1" on the left side of temporal region. He has further stated that there was contusion on the right side of the head, 12 other contusions and 3 lacerated wounds were also there. All the above injuries were caused by hard and blunt object. They were ante mortem in nature. Therefore, the evidence of Bai (PW-2) stands corroborated by medical evidence. In cross-examination of this witness, the defence has not been able to bring any circumstance on record, which makes the evidence of this witness unreliable and untrustworthy.

14) As far as the argument advanced by learned counsel appearing for the accused/appellant that as per the evidence, some persons were working in the adjoining fields, but they had not intervened or deposed before the trial Court is concerned, it is true that none of them came forward. Bai (PW-2) has stated that when she raised cries all of them ran away instead of coming and intervening. As there was family dispute, therefore, it appears that the persons working in the adjoining fields preferred not to interfere in the dispute. The evidence of Bai (PW-2) cannot be disbelieved merely on the ground that the persons working in the adjoining fields did not

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come & intervene and give their evidence. The only precaution which is required to be taken is that she being an interested witness and the only witness, the Court has to scrutinize her evidence in more careful and meticulous manner. As mentioned in the earlier part of the judgment, the evidence of Bai (PW-2) is corroborated by medical evidence as also, the accused himself submitted report (Ex.P/16) before the Police that there was a scuffle and marpeet in the field, therefore, we do not find any substance in the arguments advanced by learned counsel for the accused/appellant.

15) As far as third circumstance is concerned, there is no substantial omission or contradiction in the evidence of Bai (PW-2).

16) Learned counsel for the accused/appellant also argued that the incident took place at about 2.00 p.m. whereas, First Information Report was lodged at 8.15 p.m., therefore, there is delay in lodging the report. He further argued that the Police reached to the village on the next day morning; thereafter they registered the report Ex.P/1.

17) As far as delay is concerned, the incident said to have been taken place at about 2.00 p.m., thereafter body of Ishwar was brought to the village from where Bai (PW-2) went to the house of Biharilal (PW-1) and informed him. Biharilal went to the house Bai, saw the body of Ishwar and went to the Police Station for lodging the report, which was situated at a distance of 20 kms. from the place of occurrence. In this process, it cannot be said that the report was lodged with delay. As far as the coming of Police to the village on the next day morning is concerned, in cross-examination, nothing has been asked on this point. The report was lodged in the night and there was a distance of 20 kms. On account of darkness, it was not possible for the

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Police to start investigation on the spot, therefore, investigation was started on the next day morning. In view of the above, there is no substance in the arguments advanced by learned counsel for accused/appellant.

18) For the foregoing reasons, we are of the considered opinion that as far as involvement of the accused/appellant in the crime in question is concerned, there is no illegality or infirmity in the judgment of the trial Court.

19) Learned counsel for the accused/appellant also argued that there was a dispute regarding agricultural land and accused – Radhe ploughing the field as per the evidence of Bai (PW-2). At that time deceased and Bai (PW-2) came on the spot and started quarrelling. In that process, the accused attacked the deceased with lathi and there was only one serious injury and remaining are simple in nature. The accused had no intention to cause death of Ishwar.

20) On the other hand, learned counsel for the State supported the judgment of the trial Court.

21) As per the evidence of Bai (PW-2), it is admitted position that the accused was ploughing the field, she along with Ishwar went on the spot and objected by saying that why he is ploughing the filed, on which some altercation took place, the accused attacked the deceased with lathi. From the evidence of Bai, it is also established that there was dispute between the parties regarding the land in question because the accused is the son of brother-in-law of Bai (PW-2), therefore, they were from one family and there was dispute regarding the land. In that process, when the accused was ploughing the field, Bai and Ishwar came and started quarrelling. Moreover, nothing has been brought on record by the prosecution in order to establish

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that the field in question was in possession of Ishwar & Bai and that the accused was ploughing the field without any right. In the circumstances, the quarrel started on the ground of old dispute of agricultural land. In that process when Ishwar and Bai intervened when the accused ploughing the filed, the accused attacked the deceased with lathi, caused 17 injuries, out of which one was serious injury and remaining injuries were simple in nature. Therefore, we are of the considered opinion that, in the circumstances, the prosecution has not been able to establish that the accused attacked the deceased with intention to cause death of Ishwar, but the manner in which he assaulted the deceased, it can safely be inferred that accused had the knowledge that he may likely to cause death, therefore, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the Indian Penal Code.

22) In the result, the appeal partly succeeds. The conviction and sentence imposed against the accused/appellant under Section 302 of the Indian Penal Code are set aside, instead thereof, he is convicted under Section 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years. It is stated that the accused/appellant is in custody since 30-6-1997; therefore, he will be entitled for set off for the above detention period against the sentence imposed upon him.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Gowri